



P24757.A04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Gennadi FINKELSHTAIN et al.

Confirmation No. 5279

Group Art Unit: 1745

Serial No. :10/758,080

Examiner: Echelmeyer, A.E.

Filed : January 16, 2004

For : HYDRIDE-BASED FUEL CELL DESIGNED FOR THE ELIMINATION OF
HYDROGEN FORMED THEREIN

ELECTION WITH TRAVERSE

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

This is in response to the requirement for restriction under 35 U.S.C. § 121 mailed from the U.S. Patent and Trademark Office on May 7, 2007. Inasmuch as the one-month shortened statutory period for reply is set in the Office Action to expire on June 7, 2007, this response is being filed by the initial due date for response. However, if any extension of time is necessary, this is an express request for any necessary extension of time and authorization to charge any required extension of time fee or any other fees which may be required to preserve the pendency of the present application to Deposit Account No. 19-0089.

RESTRICTION REQUIREMENT

The Examiner has required restriction under 35 U.S.C. 121 to one of the following inventions:

- I. Claims 1-33 and 69-102, drawn to a fuel cell having a membrane pervious to hydrogen and impervious to liquids and solids, classified in class 429, subclass 12.
- II. Claims 34-68, drawn to a membrane for a fuel cell that is pervious to hydrogen and impervious to liquids and solids, classified in class 96, subclass 4.

Furthermore, if the invention of Group I is elected the Examiner requests that an Election of Species directed to the following patentably distinct species be made:

- Species I: Claims 1-33 and 69 reciting a membrane;
- Species II: Claims 70-102, allegedly not reciting a membrane.

Additionally, if the above Species I is elected the Examiner requests that a further Election of Species be made, i.e., between:

- (1) Claims 2-29, reciting a porous membrane; and
- (2) Claims 30-33, reciting a nonporous membrane.

ELECTION

In order to be responsive to the requirement for restriction, Applicants elect, with traverse, the invention set forth in **claims 1-33 and 69-102** (the invention of **Group I** as identified in the

Restriction Requirement) and **Species I (1)** reciting a **porous membrane**. Currently at least claims 1-29, 91 and 102 read on the elected species.

TRAVERSE

Applicants respectfully submit that a restriction requirement is inappropriate in this case. Even if one were to assume, *arguendo*, that the inventions of Groups I to II are distinct, the requirement for restriction should be withdrawn because there is no serious burden.

In MPEP Chapter 800, the Office sets forth its policy by which examiners are guided in requiring restriction under 35 U.S.C. § 121. Section 803 states that “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”

Applicants note that the inventions of Groups I to II identified in the Restriction Requirement relate to hydride-based fuel cells comprising membranes (at least as far as claims 1-33, 69, 91 and 102 are concerned) and to membrane units for hydride-based fuel cells, respectively. Accordingly, as a practical matter, the searches for inventions I and II should significantly overlap. For example, a search for the invention of Group I should cover many of the areas that are also relevant for the invention of Group II. Thus, the search burden would not be serious.

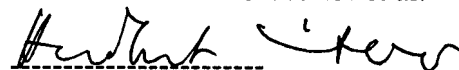
Moreover, an election of species between fuel cells comprising porous membranes and fuel cells comprising non-porous membranes is inappropriate for substantially the same reasons as set forth above, i.e., the search burden would not be serious because the corresponding searches should significantly overlap, if not be substantially co-extensive.

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For the above reasons alone, the Restriction Requirement and Election of Species Requirement should be withdrawn, which action is respectfully requested.

Should there be any questions, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
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